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16 **UNITED STATES DISTRICT COURT**
17 **CENTRAL DISTRICT OF CALIFORNIA – SANTA ANA DIVISION**
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19 RHYN NOLL, an individual,) Case No. SACV 08-617 AG (MLGx)
20 Plaintiff,) Honorable Andrew J. Guilford
21) Complaint filed: June 3, 2008
22 v.)
23)
24 STREET SURFING, LLC, WAL-) **[PROPOSED] PROTECTIVE ORDER**
25 MART STORES, INC., TARGET)
26 CORPORATION, TSA STORES,)
27 INC., and DOES 1 through 10,)
28 inclusive.)
Defendants.)
_____)
_____)

29 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

1 BASED UPON THE STIPULATION OF THE PARTIES, AND GOOD CAUSE
2 APPEARING, IT IS HEREBY ORDERED that any person or party subject to this
3 Order – including without limitation the parties to this action, their representatives,
4 agents, experts and consultants, all third parties providing discovery in this action, and
5 all other interested persons with actual or constructive notice of this Order – shall
6 adhere to the following terms:
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9 1. **Overview:** Any person or party subject to this Order who receives from
10 any other person or party any information of any kind provided in the course of
11 discovery in the action (hereinafter “Discovery Material”) that is designated as
12 “Confidential” and/or “Confidential/Attorneys’ Eyes Only” pursuant to the terms of this
13 Order (hereinafter, the “Confidential Information” of “Confidential Discovery
14 Material”) shall not disclose such Confidential Information to anyone else except as
15 expressly permitted hereunder.
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19 2. **Material Designated As “Confidential”:** The person or party disclosing
20 or producing any given Discovery Material may designate as “Confidential” such
21 portion of such material as consists of any commercially sensitive and/or confidential
22 financial or business information, such as purchase records, sales records, item
23 profitability reports, pricing methods, and confidential nonpublic contracts. The parties,
24 or some of them, request protection of such information on the grounds that said
25 information is not ordinarily available to the public, that said information, if disclosed,
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1 could be harmful to the parties, or any of them, that said information, if disclosed, could
2 be helpful to the competitors of the parties, or any of them, and that said information
3 therefore requires special protection from disclosure pursuant to F.R.C.P. 26(c).
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5 3. **Disclosure Of “Confidential” Materials:** No person or party subject to
6 the Order other than the producing person or party shall disclose any of the Discovery
7 Material designated by the producing person or party as “Confidential” to any other
8 person whomsoever, except to:
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10 (a) the parties to this action and Protective Order, including their
11 employees and former employees;
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13 (b) in-house (or corporate) legal counsel, and outside attorneys retained
14 specifically for this action, and fellow employees of each such attorneys’ law firms to
15 whom it is reasonably necessary to disclose such Confidential Discovery Material;
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17 (c) its author, its addressee, and any other person indicated on the face
18 of the document as having received a copy;
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20 (d) any employee or agent, or former employee or agent, of any sender
21 or recipient of the document (e.g. where a Purchase Order from Company A to
22 Company B is produced in litigation by Company A, said document may be disclosed to
23 employees or agents of Company B under the terms of this Protective Order).
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25 (e) any person retained by a party to serve as an expert witness or
26 otherwise providing specialized advice to counsel in connection with this action,
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1 provided such person has first executed a Non-Disclosure Agreement in the form
2 annexed as an Exhibit hereto;

3 (f) stenographers engaged to transcribe depositions conducted in this
4 action and their support personnel; and

6 (g) the Court and its support personnel;

8 (h) any mediator or settlement officer, whom the parties have elected or
9 consented to preside over the case.

10 (i) as required by law or court order upon notice to the designating
11 party sufficiently in advance of such disclosure to permit it to seek a protective order.
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13 4. **Material Designated As “Confidential/Attorneys’ Eyes Only”:** The
14 person or party disclosing or producing any given Discovery Material may designate
15 material as “Confidential/Attorneys’ Eyes Only” only if (a) the material meets the
16 definition of Confidential, pursuant to Section 2 above, and (b) an opposing party is a
17 direct competitor, or a potential direct customer of that party. A party may not mark
18 documents as “Confidential/Attorneys’ Eyes Only” in order to keep the documents from
19 any other party, if the two parties are represented by the same attorneys in this matter.
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23 5. **Disclosure Of “Confidential/Attorneys’ Eyes Only” Material:** No
24 person or party subject to this Order other than the producing person or party shall
25 disclose any of the Discovery Material designated by the producing person or party as
26 “Confidential/Attorneys’ Eyes Only” to any other person whomsoever, except to:
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1 a) outside attorneys retained specifically for this action, and fellow
2 employees of each such attorneys' law firms to whom it is reasonably necessary to
3 disclose such Confidential Discovery Material;

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5 b) outside experts and outside consultants (including their employees
6 or clerical assistants) who are employed, retained or otherwise consulted by a party or
7 its attorneys for the purpose of analyzing data, conducting studies or providing opinions
8 to assist, in any way, in this litigation and to whom it is reasonably necessary to disclose
9 such Confidential Discovery Material, provided such person has first executed a Non-
10 Disclosure Agreement in the form annexed as an Exhibit hereto;

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12 c) the party producing said documents and persons affiliated with the
13 party producing said documents, including the producing party's employees and former
14 employees (provided such former employee has first executed a Non-Disclosure
15 Agreement in the form annexed as an Exhibit hereto), during the time they are testifying
16 in deposition or at trial, or in connection with written discovery requests;

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18 d) Any employee or agent of any sender or recipient of the document
19 (e.g. where a Purchase Order from Company A to Company B is produced in litigation
20 by Company A, said document may be disclosed to employees or agents of Company B
21 under the terms of this Protective Order).

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23 e) stenographers engaged to transcribe depositions conducted in this
24 action;

1 f) the Court and its support personnel

2 g) any mediator or settlement officer, whom the parties have elected or
3 consented to preside over the case, and/or
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5 h) as required by law or court order upon notice to the designating
6 party sufficiently in advance of such disclosure to permit it to seek a protective order.
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8 6. **Deposition Transcripts:** With respect to the Confidential portion(s) of any
9 Discovery material other than deposition transcripts and exhibits, the producing person
10 or party or that person's or party's counsel may designate such portion(s) as
11 "Confidential" or "Confidential /Attorneys' Eyes Only" by stamping or otherwise
12 clearly marking as "Confidential" or "Confidential/Attorneys' Eyes Only" the protected
13 portion(s) in a manner that will not interfere with legibility or audibility. With respect
14 to deposition transcripts and exhibits, a producing person or party or that person or
15 party's counsel may indicate on the record that a question calls for Confidential
16 Information, in which case the transcript of the designated testimony shall be bound in a
17 separate volume and marked "Confidential Information Governed by Protective Order"
18 by the reporter.
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20 7. **Documents Under Seal:** The designation of documents or information as
21 "Confidential" or "Confidential/Attorneys' Eyes Only" creates no entitlement to file
22 such documents or information under seal. Civil Local Rule 79-5 sets forth the
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1 procedures that must be followed and reflects the standards that will be applied when a
2 party seeks permission from the court to file materials under seal.

3 8. **Separate Non-Disclosure Agreements:** Prior to any disclosure of any
4 Confidential Discovery Material to any person referred to in paragraph 3a, 3b, 3e, 5a,
5 5b, and/or 5c above, such person shall be provided by counsel with a copy of this
6 Protective Order and shall sign a Non-Disclosure Agreement in the form agreed to by
7 the Parties, stating that that person has read this Order and agrees to be bound by its
8 terms. Said counsel shall retain each signed Non-Disclosure Agreement, hold it in
9 escrow, and upon request produce it to opposing counsel either prior to such person
10 being permitted to testify (at deposition or trial) or at the conclusion of the case,
11 whichever comes first.
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16 9. **Failure To Designate:** If at any time prior to the trial of this action, a
17 producing person or party realizes that some portion(s) of Discovery Material that that
18 person or party previously produced without limitation should be designated as
19 “Confidential” and/or “Confidential /Attorneys’ Eyes Only”, they may so designate by
20 so apprising all parties in writing, and providing said parties with appropriately marked
21 copies of said Discovery Material, where possible, and such designated portion(s) of the
22 Discovery Material will thereafter be treated as “Confidential” and/or
23 “Confidential/Attorneys’ Eyes Only” under the terms of this Order.
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1 **10. Designations In Good Faith:** “Confidential” and/or
2 “Confidential/Attorneys’ Eyes Only” material shall only include information which the
3 designating party in good faith believes will, if disclosed, have the effect of causing
4 harm to its competitive position. “Confidential” and/or “Confidential/Attorneys’ Eyes
5 Only” material shall not include information that (a) was, is or becomes public
6 knowledge, not in violation of this Protective Order or any other obligation of
7 confidentiality, or (b) was or is acquired from a third party having no direct or indirect
8 obligation of confidentiality to the designating party.
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11 **11. Objections To Designations:** Any party who either objects to any
12 designation of confidentiality, or who, by contrast, requests still further limits on
13 disclosure (such as in camera review in extraordinary circumstances), may at any time
14 prior to the trial of this action serve upon counsel for the designating person or party a
15 written notice stating with particularity the grounds of the objection or request. If
16 agreement cannot be reached promptly, counsel for the objecting party may seek
17 appropriate relief from the Court in accordance with Local Rule 37 and the party
18 asserting confidentiality shall have the burden of providing same. Should the Court
19 determine a designation of confidentiality was not made in good faith, the objecting
20 party shall be entitled to recovery of reasonable attorneys fees and costs in connection
21 with bringing the Motion to object to any designation of confidentiality. If a party
22 disagrees with or challenges the grounds or basis for the designation of any document
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1 or information as Confidential Material, that party nevertheless shall treat and protect
2 such material as Confidential Material in accordance with this Protective Order unless
3 and until all parties shall have agreed in writing, or an order of the Court shall have
4 been entered, that provides that such challenged Confidential Material may be used or
5 disclosed in a manner different from that specified for Confidential Material in this
6 Protective Order.
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9 12. **Use At Trial:** Documents designated “Confidential” and/or
10 “Confidential/Attorneys’ Eyes Only” may be used by any party without limitation at
11 trial. However, any party who wishes to have such documents treated as “Confidential”
12 and/or “Confidential/Attorneys’ Eyes Only” may renew their request for confidentiality
13 before the trial judge at the status conference and/or through a motion in limine.
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16 13. **Continuing Jurisdiction:** This Court shall retain jurisdiction over all
17 persons subject to this Order to the extent necessary to enforce any obligations arising
18 hereunder or to impose sanctions for any contempt thereof.
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20 14. **Obligations Upon Termination Of Litigation:** This Protective Order
21 shall survive the termination of the litigation. Within 30 days of the final disposition of
22 this action, including all appeals, all Discovery Materials designated as “Confidential,”
23 and/or “Confidential/Attorneys’ Eyes Only” and all copies thereof, that have not been
24 annotated, illuminated or otherwise “marked-up” shall be promptly returned to the
25 producing person or party (at the producing person’s expense), or shall be destroyed.
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1 All documents marked “Confidential,” and/or “Confidential/Attorneys’ Eyes Only” that
2 have been annotated, illuminated or otherwise “marked-up” shall not be returned, but
3 shall be destroyed.
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5 15. **Further Modifications:** Any party to this action may, at any time,
6 request the modification of this Protective Order, upon a noticed motion, unless
7 emergency relief is appropriate, and upon a showing of good cause.
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9 **IT IS SO ORDERED.**
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12 Date: March 4, 2009



13 Hon. Marc L. Goldman
14 United States Magistrate Judge
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